

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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WARN INDUSTRIES, INC.,
Plaintiff,
v.
AGENCY 6 INC.,
Defendant.

No. 2:22-cv-01358 WBS JDP

MEMORANDUM AND ORDER RE:
DEFENDANT'S MOTION TO DISMISS

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Plaintiff Warn Industries, Inc. brought this patent infringement action against Agency 6 Inc. alleging induced infringement, contributory infringement, and willful infringement. (Compl. (Docket No. 1).) Defendant now moves to dismiss plaintiff's complaint in its entirety.¹ (Mot. (Docket No. 12).)

I. BACKGROUND

¹ Defendant has requested that the United States Patent and Trade Office reconsider the grant of the '963 Patent under 35 U.S.C § 102 and 35 U.S.C § 103. (See Mot. at 4, fn. 4.) A review under § 102 and § 103 does not impact this motion.

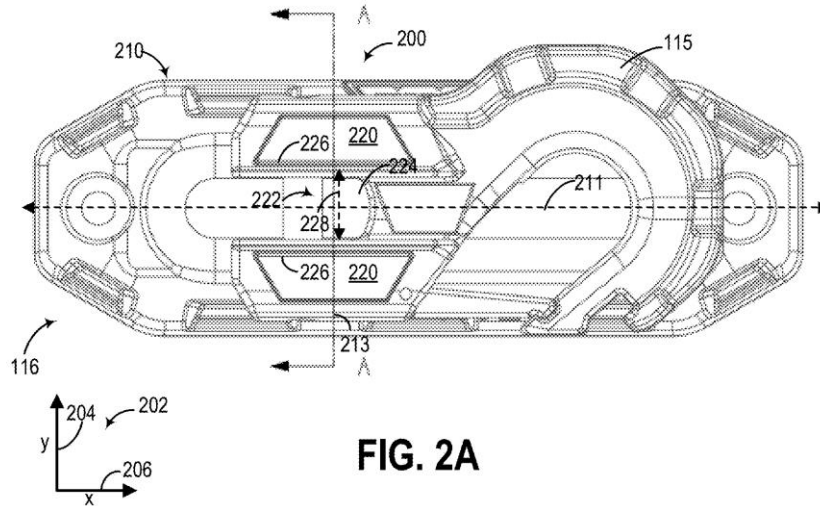
1 Plaintiff is a Delaware corporation with its principal
2 place of business in Clackamas, Oregon. (Compl. ¶ 2.) Defendant
3 Agency 6 is a California corporation with its principal place of
4 business in Roseville, California. (Id.) Plaintiff
5 manufactures, markets, and sells winches, among other related
6 rigging accessories and shackles.² (Id. ¶¶ 3, 32-36.)

7 On November 9, 2021, the United States Patent and
8 Trademark Office ("USPTO") issued to plaintiff Patent No.
9 11,167,963 (the "'963 Patent") entitled "Fairlead Systems for
10 Winch Rope Interfaces and Recovery Rigging Mountable to a Winch
11 and Fairlead and/or Vehicle Bumper." (Id. ¶ 40.) The '963
12 Patent "generally describes a shackle mount that is connectable
13 to a standard recovery winch cable. The shackle mount includes a
14 shackle attachment tab that prevents lateral movement of the
15 shackle mount along the shackle pin." (Id. ¶ 59.) The '963
16 Patent thus "protects the fairlead³ of a winch system from damage
17 due to impact from the cable terminal." (Compl., Ex. A (the
18 "'963 Patent") at 19 (Docket No. 1-2).)⁴

20 ² A "winch" refers to a type of mechanical device that is
21 used to pull in or let out a rope or cable wound around a spool
22 or drum. A "shackle" refers to a U-shaped piece of metal secured
23 with a pin, bolt, or hinged loop. A "winch shackle" is a device
24 wherein a "winch" and a "shackle" are manufactured as one unit.
25 As plaintiff explains: "Winch shackles are attachment points for
the end of winch cables, and provide a safer, stronger, and more
secure attachment point than traditional hooks often found at the
end of winch cables." (Compl. ¶ 37.)

26 ³ A "fairlead" is a device to guide a line, rope, or
27 cable around an object, such as a spool or drum.

28 ⁴ For simplicity, the court will cite to the ECF page
numbers when referencing Exhibit A, a copy of the '963 Patent.

**FIG. 2A**

(Id. at 5.)

Claim 1 of the '963 Patent provides:

A rigging interface, comprising:

a first surface arranged on an inner side of the rigging interface, the inner side including two side portions spaced apart from one another in vertical direction, wherein the two side portions of the inner side are configured to nest against a front of a winch fairlead;

an extension configured to be coupled to a cable such that the cable is couplable around the extension, the cable extending outward from the winch fairlead and wound around a drum of the winch, wherein the cable is configured to extend between the two side portions of the inner side to couple with the extension.⁵

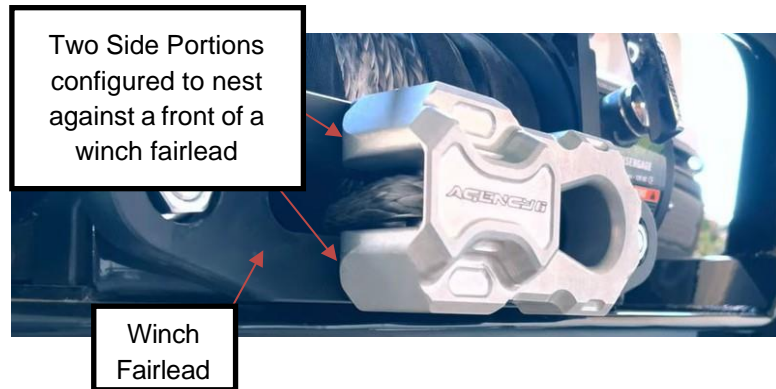
(Id. at 19.)

Plaintiff alleges that defendant's Billet⁶ Winch Shackle (the "Accused Product"), satisfies every description of Claim 1. (See Compl., Ex. D ("Claim Chart") (Docket No. 1-5).) In the Claim Chart, plaintiff provides photographs of the Accused Product with added labels showing how the Accused Product

⁵ Both parties direct their arguments to Claim 1 because it is the only independent claim of the '963 Patent. Therefore, this order will also focus on Claim 1.

⁶ A billet is a solid length of metal with a square or circle cross-section.

satisfies every description.⁷



(Id. at 2.)

On October 22, 2020, plaintiff sent defendant a cease and desist letter regarding the Accused Product, claiming infringement of United States Patent No. 9,388,025 (the "'025 Patent") and United States Patent Publication No. 2019/0127190 (the "'190 Publication), which issued as the '963 Patent the following year.⁸ (Compl. ¶ 51.) The letter states: "[T]he '190 Publication is directed toward similar rigging shackles While the claims of the '190 Publication have yet to be granted, the embodiments disclosed therein nonetheless appear to be very similar to [the Accused Product]." (Id. ¶ 52.)

In January 2021, defendant informed plaintiff that it was redesigning the Accused Product. (Mot. at 5.) The following

⁷ For example, to illustrate that the Accused Product includes "a first surface arranged on an inner side of the rigger interface" and "the inner side including two side portions spaced apart from one another in vertical direction," plaintiff labels two images of the Accused Product with the labels "first surface on inner side," "two side portions," and "vertical direction." (Claim Chart at 2.)

⁸ The '190 Publication was filed on November 1, 2017. The resulting '963 Patent issued on November 9, 2021, approximately a year after plaintiff's cease and desist letter.

1 month, defendant provided plaintiff with a drawing of the new
2 version of the product. (Id.) Plaintiff alleges that defendant
3 altered the functionality of its products to avoid infringement
4 of the '025 Patent but did not make any alterations to avoid
5 infringement of the '963 Patent. (Compl. ¶¶ 55-56.) Plaintiff
6 also alleges defendant sells the Accused Product on defendant's
7 website as well as third-party platforms like Amazon. (Id. ¶¶
8 49-50.)

9 II. LEGAL STANDARD

10 Federal Rule of Civil Procedure 12(b)(6) allows for
11 dismissal when the plaintiff's complaint fails to state a claim
12 upon which relief can be granted. See Fed. R. Civ. P. 12(b)(6).
13 "A Rule 12(b)(6) motion tests the legal sufficiency of a claim."
14 Navarro v. Block, 250 F.3d 729, 732 (9th Cir. 2001). The inquiry
15 before the court is whether, accepting the allegations in the
16 complaint as true and drawing all reasonable inferences in the
17 plaintiff's favor, the complaint has alleged "sufficient facts
18 . . . to support a cognizable legal theory," id., and thereby
19 stated "a claim to relief that is plausible on its face," Bell
20 Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007). In deciding
21 such a motion, all material allegations of the complaint are
22 accepted as true, as well as all reasonable inferences to be
23 drawn from them. Id.

24 "[P]atent eligibility can be determined at the Rule
25 12(b)(6) stage." Aatrix Software, Inc. v. Green Shades Software,
26 Inc., 882 F.3d 1121, 1125 (Fed. Cir. 2018) (citations omitted).
27 Pursuant to statute, "[a] patent shall be presumed valid." 35
28 U.S.C. § 282. Accordingly, a defendant's "burden in seeking to

1 dismiss plaintiff's claims based on patent ineligibility is high
2 because of the [p]atent's presumptive validity." Boar's Head
3 Corp. v. DirectApps, Inc., No. 2:14-cv-01927 KJM KJN, 2015 WL
4 4530596, at *3 (E.D. Cal. July 28, 2015) (citation omitted).
5 "Additionally, in applying § 101 jurisprudence at the pleading
6 stage, the [c]ourt construes patent claims in a manner most
7 favorable to [p]laintiff." Vineyard Investigations v. E. & J.
8 Gallo Winery, 510 F. Supp. 3d 926, 934 (E.D. Cal. 2021) (Drozd,
9 J.) (citation omitted).

10 III. DISCUSSION

11 A. Claim Construction

12 As a preliminary matter, the court must first address
13 whether claim construction is required at this stage in the
14 proceedings. Claim construction is not required to resolve a
15 motion based on § 101 eligibility. See e.g., Content Extraction
16 & Transmission LLC v. Wells Fargo Bank, Nat. Ass'n, 776 F.3d
17 1343, 1349 (Fed. Cir. 2014) ("Although the determination of
18 patent eligibility requires a full understanding of the basic
19 character of the claimed subject matter, claim construction is
20 not an inviolable prerequisite to a validity determination under
21 § 101.") (citing Ultramercial, Inc. v. Hulu, LLC, 772 F.3d 709,
22 714-15 (Fed. Cir. 2014); Bancorp Servs., LLC v. Sun Life
23 Assurance Co. of Canada (U.S.), 687 F.3d 1266, 1273-74 (Fed. Cir.
24 2012)).

25 If claim construction disputes exist at the 12(b)(6)
26 stage, as they do here, a court may either "proceed by adopting
27 the non-moving party's constructions" or "resolve the disputes to
28 whatever extent is needed to conduct the § 101 analysis, which

1 may well be less than a full, formal claim construction.” Aatrix
2 Software, 882 F.3d at 1125. Accordingly, the court concludes
3 that a separate claim construction hearing is unnecessary to
4 decide present the motion.

5 B. Patent Eligibility

6 Section 101 of the Patent Act defines patent-eligible
7 subject matter as “any new and useful process, machine,
8 manufacture, or composition of matter, or any new and useful
9 improvement thereof.” 35 U.S.C. § 101. “[Section] 101
10 specifically excludes from patent eligibility laws of nature,
11 natural phenomena, and abstract ideas.” Vineyard Investigations,
12 510 F. Supp. 3d at 934 (citing Ass’n for Molecular Pathology v.
13 Myriad Genetics, Inc., 569 U.S. 576, 589 (2013)). However, the
14 Supreme Court has recognized that “all inventions at some level
15 embody, use, reflect, rest upon, or apply . . . abstract ideas.”
16 Mayo Collaborative Servs. v. Prometheus Lab’ys, Inc., 566 U.S.
17 66, 71 (2012). Thus, inventions which apply an abstract concept
18 “to a new and useful end” remain eligible for patent protection.
19 Alice Corp. Pty. Ltd. v. CLS Bank Int’l, 573 U.S. 208, 217 (2014)
20 (citations and quotations omitted).

21 In Alice, 573 U.S. 208 (2014), the Supreme Court
22 established a two-part test to determine whether claims are
23 patent eligible under § 101. First, a court must determine
24 whether the claims at issue are “directed at an abstract idea” or
25 other patent-ineligible concepts. Id. at 217. Second, if a
26 claim is directed at a patent-ineligible concept, a court
27 considers whether the claim “contains an inventive concept
28 sufficient to transform the claimed abstract idea into a patent-

1 eligible application.” Id. at 221 (citations and quotations
2 omitted). “If the claims are not directed to an abstract idea,
3 the inquiry ends.” McRO, Inc. v. Bandai Namco Games Am. Inc.,
4 837 F.3d 1299, 1312 (Fed. Cir. 2016).

5 Plaintiff argues that the ‘963 Patent’s claims are
6 directed to statutorily eligible subject matter -- “machines:
7 rigging interfaces with various well-defined surfaces and other
8 components” -- and thus falls within an enumerated category of §
9 101. (Opp’n at 6-7); see Ultramercial, 772 F.3d at 713-14 (“A §
10 101 analysis begins by identifying whether an invention fits
11 within one of the four statutorily provided categories of patent-
12 eligible subject matter.”).

13 “The Supreme Court has defined ‘machine’ as ‘a concrete
14 thing, consisting of parts, or of certain devices and combination
15 of devices.’” In re Nuijten, 500 F.3d 1346, 1355 (Fed. Cir.
16 2007) (quoting Burr v. Duryee, 68 U.S. 531, 570 (1863)) (finding
17 a “signal” is not a “machine” under § 101 because it “does not
18 possess concrete structure . . .”). “[M]achines, which are
19 tangible . . . should not be considered to be abstract ideas.”
20 Ariosa Diagnostics, Inc. v. Sequenom, Inc., 809 F.3d 1282, 1285
21 (Fed. Cir. 2015) (Dyk, J., concurring); cf Digitech Image Techs.,
22 LLC v. Elecs. for Imaging, Inc., 758 F.3d 1344, 1349 (Fed. Cir.
23 2014) (finding patent with claims directed at a digital
24 processing system “[wa]s not a tangible or physical thing and
25 d[id] not fall within any of the categories of eligible subject
26 matter”).

27 Plaintiff relies on Junk Food Custom Arcades, LLC v.
28 Hit Box, LLC, 2022 WL 17920364, No. 2:21-cv-262 RWS (N.D. Ga.

1 Oct. 18, 2022), for the proposition that claims directed to
2 “surfaces” may constitute a machine under § 101. (See Opp’n at
3 8-11.) There, one patent “claim[ed] an allegedly novel hand
4 operated game controller which utilizes an all-push-button
5 surface with an allegedly novel button arrangement.” Junk Food,
6 2022 WL 17920364, at *1. The court found that patent was not
7 “directed at an abstract idea” under Alice’s step one for two
8 reasons. First, the patent specified “tangible boundary lines,
9 function buttons, and movement buttons located in specific
10 locations and orders relative to each other that are intended” to
11 improve the device. Id. at *5. Second, the patent “claim[ed]
12 tangible forms, including tangible and novel arrangement[s] and
13 placement of buttons.” Id.

14 In adopting plaintiff’s claim constructions, as the
15 court must at the 12(b)(6) stage, see Aatrix, 882 F.3d at 1125,
16 the ‘963 Patent is “a concrete thing” comprised of multiple
17 surfaces and extensions which “protect[] the fairlead of a winch
18 system from damage” (‘963 Patent at 19.) Specifically,
19 Claim 1 explains that the invention claimed comprises “a first
20 surface arranged on an inner side of the rigging interface . . .
21 wherein the two side portions of the inner side are configured to
22 nest against a front of a winch fairlead.” (Id.) Like in Junk
23 Food, Claim 1 specifies a tangible form and tangible boundary
24 lines. Junk Food, 2022 WL 17920364, at *5.

25 Defendant attempts to advance arguments that the ‘963
26 Patent is not patent-eligible because of plaintiff’s word choice
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28

1 in the claims, such as "interface," "extension," and "surfaces."⁹
2 (Mot. at 12-13.) However, parsing the definitions of words in
3 isolation is not the appropriate task for the court at this stage
4 in the proceedings. At Alice step one, the court must "look[] at
5 the 'focus' of the claims, their 'character as a whole.'" Elec.
6 Power Grp., LLC v. Alstom S.A., 830 F.3d 1350, 1353 (Fed. Cir.
7 2016). Moreover, at the 12(b)(6) stage, "the [c]ourt construes
8 patent claims in a manner most favorable to [p]laintiff."
9 Vineyard Investigations, 510 F. Supp. 3d at 934. Thus, any
10 factual disputes must be resolved by assuming the construction
11 most favorable to plaintiff. See Boar's Head, 2015 WL 4530596,
12 at *7 (citations omitted).

13 Accordingly, plaintiff has sufficiently plead that the
14 '963 Patent is directed at patent-eligible subject matter under
15 step one of Alice because it is tangible and possesses a concrete
16 structure. The court therefore need not progress to step two of
17 Alice.

18 B. Patent Infringement

19 Within the the Complaint's claim for patent
20 infringement of the '963 Patent, plaintiff pleads that defendant
21 is liable for inducement, contributory infringement, and willful
22 infringement. (Compl. ¶¶ 62-72.)

23 1. Direct Infringement

24 To support a claim for inducement or contributory
25 infringement, there must be an underlying act of direct

26 ⁹ For example, defendant posits that "a surface, like a
27 side, is a concept or mathematical relationship between locations
28 in space, rather than a physical device" and therefore is patent-
ineligible subject matter. (Mot. at 5.)

1 infringement.¹⁰ See In re Bill of Lading Transmission and
 2 Processing Sys. Patent Litig., 681 F.3d 1323, 1333 (Fed. Cir.
 3 2012). “[T]o prove direct infringement, a patentee must either
 4 point to specific instances of direct infringement or show that
 5 the accused device necessarily infringes the patent in suit.”
 6 ACCO Brands, Inc. v. ABA Locks Mfrs. Co., 501 F.3d 1307, 1313
 7 (Fed. Cir. 2007). Where “the accused device can be used at any
 8 given time in a noninfringing manner, the accused device does not
 9 necessarily infringe the [] patent.” Id. (finding no direct
 10 infringement where the patentee “failed to point to specific
 11 instances of direct infringement” and the device had
 12 noninfringing uses).

13 As the court detailed above when describing plaintiff’s
 14 Claim Chart, plaintiff alleges that the Accused Product conforms
 15 with every specification of Claim 1. (See Ex. D.) Thus, the
 16 Accused Product “necessarily infringes the patent in suit.” ACCO
 17 Brands, 501 F.3d at 1313. Accordingly, plaintiff has
 18 sufficiently plead direct infringement of the ‘963 Patent.

19 2. Inducement

20 Under section § 271(b) of the Patent Act, “[w]hoever
 21 actively induces infringement of a patent shall be liable as an
 22 infringer.” 35 U.S.C. § 271(b). A patent holder “must prove
 23 that once the defendant[] knew of the patent, they actively and
 24 knowingly aid[ed] and abett[ed] another’s direct infringement.”
 25 DSU Med. Corp. v. JMS Co., 471 F.3d 1293, 1305 (Fed. Cir. 2006)

26 ¹⁰ Section 271(a) provides: “[W]hoever without authority
 27 makes, uses, offers to sell, or sells any patented invention . .
 28 . during the term of the patent therefor, infringes the patent.”
 35 U.S.C. § 271(a).

(citation and quotations omitted); see also id. at 1306 (“While proof of intent is necessary, direct evidence is not required; rather, circumstantial evidence may suffice.”) (citation and quotation omitted).

Plaintiff argues defendant induced infringement of at least Claim 1 “by selling the Accused Products with instructions as to how to use the Accused Products in a system such as that recited in the ‘963 Patent.” (Compl. ¶ 63.) Moreover, plaintiff contends that defendant knew of the specifications of the ‘190 Publication (which later issued as the ‘963 Patent) as early as October 20, 2020, when it sent defendant the cease and desist letter. (Id.)

At this stage, plaintiff’s allegations that defendant knew of the patent, was put on notice by plaintiff of possible infringement, and actively sold the Accused Product to be used in an infringing manner are sufficient. See Google LLC v. Princeps Interface Techs. LLC, No. 19-cv-06566 EMC, 2020 WL 1478352, at *4 (N.D. Cal. Mar. 26, 2020) (“[A] patentee need only cite examples of where the accused infringer advertised benefits that can be achieved only through use of the asserted patent to plausibly plead specific intent under 12(b)(6).”) (citation and quotation omitted). Accordingly, plaintiff has sufficiently plead induced infringement of the ‘963 Patent.

2. Contributory Infringement

“Contributory infringement requires knowledge of the patent in suit and knowledge of patent infringement.” Commil USA, 575 U.S. at 639; see 35 U.S.C. § 271(c). To state a claim for contributory infringement, a plaintiff must “plead facts that

1 allow an inference that the components sold or offered for sale
2 have no substantial non-infringing uses.” In re Bill, 681 F.3d
3 at 1337-38 (“[T]he inquiry focuses on whether the accused
4 products can be used for purposes other than infringement.”)
5 (emphasis omitted). “In the context of a claim of contributory
6 infringement under § 271(c), a substantial non-infringing use is
7 any use that is ‘not unusual, far-fetched, illusory, impractical,
8 occasional, aberrant, or experimental.’” Id. at 1337 (quoting
9 Vita-Mix Corp. v. Basic Holdings, Inc., 581 F.3d 1317, 1327-29
10 (Fed. Cir. 2009)). “Where the product is equally capable of, and
11 interchangeably capable of both infringing and substantial non-
12 infringing uses, a claim for contributory infringement does not
13 lie.” Id. at 1338.

14 Defendant argues that plaintiff does not provide facts
15 sufficient to show the Accused Product has no substantial non-
16 infringing uses. (See Mot. at 21.) Defendant also contends that
17 that plaintiff’s Claim Chart in fact shows a substantial non-
18 infringing use by demonstrating the Accused Product being used
19 with a “rope” as opposed to a “cable.”¹¹ (Id. at 18-29, 21.) The
20 court is not persuaded. First, defendant’s arguments are merely
21 conclusory. Second, even if relevant to subsequent claim
22 construction of the ‘963 Patent, the court will not distinguish
23 between the use of word “cable” and “rope” at the 12(b)(6) stage.

24 As already discussed, the Claim Chart illustrates that
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26 ¹¹ Defendant explains: “In light of the distinction made
27 by [plaintiff] between cables and ropes in the ‘963 [P]atent,
28 [plaintiff’s] depiction of a rope in its claim chart does not
plausibly satisfy the ‘cable’ limitation of [C]laim 1.” (Mot. at
19.)

1 the Accused Product satisfies every specification of Claim 1.
2 Plaintiff alleges that anyone who uses the Accused Product
3 "directly infringes Claim 1 of the '963 Patent." (Compl. ¶ 64.)
4 The court therefore finds plaintiff has plausibly alleged that
5 the Accused Product has no substantial non-infringing uses.
6 Accordingly, plaintiff has sufficiently plead contributory
7 infringement of the '963 Patent.

8 3. Willful Infringement

9 Section 284 of the Patent Act states that in the case
10 of infringement, "the court may increase the damages up to three
11 times the amount found or assessed." 35 U.S.C. § 284. "While
12 'there is no precise rule or formula' for meeting out enhanced
13 damages, it is 'generally reserved for egregious cases of
14 culpable behavior.'" Sonos, Inc. v. Google LLC, 591 F. Supp. 3d
15 638, 642 (N.D. Cal. 2022) (quoting Halo Elecs., Inc. v. Pulse
16 Elecs., Inc., 579 U.S. 93, 103-04 (2016)). The Supreme Court
17 describes such behavior as "willful, wanton, malicious, bad-
18 faith, deliberate, consciously wrongful, flagrant, or--indeed--
19 characteristic of a pirate." Halo, 579 U.S. at 104; see also SRI
20 Int'l, Inc. v. Cisco Sys., Inc., 930 F.3d 1295, 1308 (Fed. Cir.
21 2019) ("[It] is the circumstances that transform simple
22 'intentional or knowing' infringement into egregious,
23 sanctionable behavior, and that makes all the difference.")
24 (citation omitted).

25 To establish willful infringement the patentee must
26 first prove knowledge of the patent and "show the accused
27 infringer had a specific intent to infringe at the time of the
28 challenged conduct." Sonos, 591 F. Supp. 3d at 644 (citing WBIP,

1 LLC v. Kohler Co., 829 F.3d 1317, 1341 (Fed. Cir. 2016); Bayer
2 Healthcare LLC v. Baxalta Inc., 989 F.3d 964, 987-88 (Fed. Cir.
3 2012)) (additional citations and quotations omitted). “[O]nce
4 willfulness is adequately pled, the complaint need not go further
5 and specify the further aggravating circumstances warranting
6 enhanced damages.”¹² Id. at 644 (emphasis omitted).

7 Here, plaintiff alleges that defendant was aware of the
8 pre-publication grant of the ‘963 Patent by at least May 2, 2019.
9 (See Compl. ¶ 69.) Plaintiff further alleges that defendant was
10 put on notice of possible infringement of the ‘963 Patent (then
11 the ‘190 Publication) when plaintiff sent the cease and desist
12 letter on October 22, 2020. (Id. ¶¶ 51-54.) Moreover, plaintiff
13 alleges that defendant altered the Accused Product to avoid
14 infringement of the ‘025 Patent but did not make any alterations
15 to avoid infringement of the ‘963 Patent. (Id. ¶¶ 55-56.)
16 Finally, plaintiff alleges that defendant continues to market and
17 sell the Accused Product. (Id. ¶¶ 47-50.)

18 In drawing all reasonable inferences in plaintiff’s
19 favor as the court must at this stage, see Twombly, 550 U.S. at
20 570, on this record plaintiff has sufficiently alleged that
21 defendant had knowledge of the ‘963 Patent and specific intent to
22 infringe by selling the Accused Product. See Sonos, 591 F. Supp.
23 3d at 644-45 (“The full extent of egregious behavior is . . .
24 unknown at the pleading stage. It would be unreasonable to

25 ¹² In Sonos, the district court highlighted the difference
26 between a party pleading willful infringement and the court
27 awarding damages after a party proved infringement. Sonos, 591
28 F. Supp. 3d at 645. As that court explained: “It would be a rare
case where the infringer disclosed the full extent of its
egregious behavior in advance of litigation, such that the
conduct could be fully described in the complaint” Id.

1 expect patent plaintiffs to be in a position to plead the full
2 extent of egregious misconduct . . .") Accordingly, plaintiff
3 has sufficiently plead willful infringement of the '963 Patent.

4 The court thus finds that the '963 Patent is directed
5 toward patent-eligible subject matter under § 101. Further, the
6 court finds that plaintiff has sufficiently alleged induced
7 infringement, contributory infringement, and willful infringement
8 of the '963 Patent.

9 IT IS THEREFORE ORDERED that defendant's motion to
10 dismiss (Docket No. 12) be, and the same hereby is, DENIED.

11 Dated: March 8, 2023



12 **WILLIAM B. SHUBB**

13 **UNITED STATES DISTRICT JUDGE**
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